

March 12, 2004

VIA FAX (202) 452-3819 AND ELECTRONIC MAIL

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20551

Re: Comments to Proposed Amendments to Regulations CC- Docket No: R-1176

Dear Ms. Johnson:

Wachovia Corporation ("Wachovia") appreciates this opportunity to comment on the proposed amendments to Regulation CC to implement the Check Clearing for the 21<sup>st</sup> Century Act, Public Law 108-100 ("Check 21 Act"). Wachovia is one of the largest providers of financial services to retail, brokerage, and corporate customers throughout the East Coast and the nation, with assets of \$401 billion, market capitalization of \$61 billion and stockholders' equity of \$32 billion as of December 31, 2003. Wachovia's four core businesses, the General Bank, Capital Management, Wealth Management, and the Corporate and Investment Bank, serve 9 million households, including 900,000 businesses, primarily in 11 East Coast states and Washington, D.C. Wachovia's broker-dealer, Wachovia Securities, LLC, serves clients in 49 states. Global services are provided through 32 international offices. Online banking and brokerage products and services also are available through Wachovia.com.

Wachovia has actively participated with other financial services industry organizations and technology companies to prepare a joint industry comment letter ("Industry Letter") to the Board. This Industry Letter addresses issues related to the proposed amendments to Regulation CC ("Reg. CC") considered by the group to be the most significant. Additionally, as a member of The Clearing House Association, L.L.C. ("The Clearing House") and a member of the Electronic Check Clearing House Corporation ("ECCHO"), we have also had the opportunity to participate in and review the comment letters that these groups are submitting to the Board. We strongly support and endorse the comments set forth in Industry Letter, The Clearing House letter, and the ECCHO letter and urge the Board to give due consideration to all of the comments outlined in these letters. We have not restated all of the comments provided in these letters, but have highlighted below a few important issues and two new issues that we believe warrant special attention and consideration by the Board. Wachovia respectfully submits its comments as follows:

1. MICR Line Variance, MICR repair, and Purported Substitute Check Issues.

Both the Industry Letter and The Clearing House letter outline in detail concerns regarding the proposed regulations' handling of MICR line variance and MICR line repair issues. Under the proposed regulations, only two variances with the MICR line on the original item are allowed: (1) position 44 and (2) an amount field error correction. Any other variance will affect the status of the item as a substitute check with legal equivalence. Moreover, the proposed regulations consider these items to be "purported substitute checks" without legal equivalence, but subject to the same warranties, indemnities, and other obligations of substitute checks. We strongly urge the Board to eliminate the "purported substitute check" concept, revise its MICR line rules, and clarify the ability of banks to do MICR repair on substitute checks in the normal course of clearing the item.

Specifically, the Board should clarify in the regulations and provide that an item that is intended to be a substitute check (bearing the legal equivalence legend), but has a MICR line variance from the original check in violation of the regulations, is still considered to be a substitute check with legal equivalence. Presently in the ordinary course of business, banks regularly repair checks with such MICR line issues and they should be permitted to repair substitute checks, comparably, in the normal course of item processing and properly post them to an account without having to worry whether the item has "legal equivalence." Recourse for losses, if any, caused by specific violations of the MICR line requirements would still be recoverable under the General Liability section of Subpart D and/or as a breach of the encoding warranties of the Uniform Commercial Code ("UCC") and Reg. CC. Moreover, the Board should clarify in the regulations that placement of the substitute check identifier in position 44 is required, and that failure to comply with this requirement will be considered a violation of Subpart D, subjecting a bank to liability under section 229.56, as well as the UCC and Reg. CC encoding warranties and other applicable law.

2. Indorsements Standards and Whether a Returning Bank should be allowed to Indorse on the Front.

The Board requested comment on whether a returning bank should be allowed to indorse on the front of the check. Because indorsements on the front of checks may obscure or interfere with certain image survivable security features or certain fraud detection tools that exist or are being developed, we concur with The Clearing House's comment that a returning bank should not be allowed to indorse on the front. Wachovia would be supportive of permitting such indorsements only if standards can be developed to restrict the placement of such indorsements to a specific limited area to ensure they would not compromise or interfere with such security features or tools.

3. Photocopy in Lieu

One issue not addressed by the three letters relates to the status of Photocopy in Lieu items after the effective date of the Check 21 Act. Wachovia would like clarification with respect to the use and validity of a Photocopy in Lieu that meets the technical definition of a substitute check but it does not contain the Check 21 legal equivalence legend. The current DSTU X9.90 standard defines an additional document that is equivalent to a substitute check except for the wording of the legend and the application of an additional overlay that would contain typical Photocopy in Lieu language. Would this document be treated as a traditional Photocopy in Lieu or as a Substitute Check that doesn't have legal equivalence because it does not bear the Check 21 legend? Given that these items would have traditional Photocopy in Lieu text in place of the Check 21 legend, would it be clear that these items are not intended to be a Substitute Check under Check 21? Addressing this issue in the regulation and standards would clarify the matter, avoid confusion, and eliminate the possibility of differing interpretations of treatment by the various market participants.

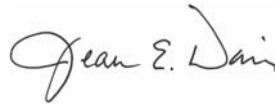
4. Notice- Multiple Accounts and Multiple Account Holders

Another issue not addressed by the letters referred to above relates to the disclosure and notice requirements contained in Subpart D. Section 229.57, Consumer Awareness, requires disclosure to each consumer who routinely receives paid checks with his or her periodic statement. Section 229.54, Expedited Recredit for Consumers, also requires that the bank send certain notices to consumers. We strongly urge the Board to clarify in Subpart D that sending a disclosure or notice to one consumer on a jointly held account would suffice as notice to each consumer on the account and, similarly, that a consumer that holds multiple accounts, needs only one disclosure. Requiring disclosure to all consumers on an account or requiring multiple disclosures to the same consumer would be inconsistent with notice and disclosure provisions of other regulations such as Subpart B of Regulation CC and Regulation DD. Furthermore, it would force banks to incur redundant, burdensome, and unnecessary costs. The problems associated with the failure to provide guidance on the notice/disclosure requirements with respect to joint accountholders upfront was a lesson learned through the implementation of Section 326 of the PATRIOT Act when

separate guidance had to be issued with respect to addressing joint accountholders, because it was not included in the original legislation or subsequent regulations. We urge the Board to include a provision in subpart D, similar to Reg. CC section 229.15(c), clarifying that with respect to the disclosure and notice requirements in subpart D a bank need not give multiple disclosures or notices to a consumer that holds multiple accounts, and, similarly, a bank need not give separate disclosures or notices to each consumer on a jointly held account.

Wachovia commends the Board for their efforts in drafting these proposed regulations, and appreciates the opportunity to comment. We also thank the Board in advance for its efforts in reviewing all comments and finalizing the regulations as quickly as possible. We look forward to receiving the final regulations, so that we can move forward with our preparations for the effective date. Any questions with respect to our comments should be addressed to either Camilla McDevitt at (706) 565-7750 or Jason Hunt at (704) 427-6509.

Very truly yours,

A handwritten signature in dark ink, reading "Jean E. Davis". The signature is fluid and cursive, with the first name "Jean" being the most prominent.

Jean Davis  
Senior Executive Vice President

cc: Jason Hunt  
Camilla Cathcart, Esq.